



**U.S. Immigration
and Customs
Enforcement**

October 29, 2010

Susan B. Long
Transactional Records Access Clearinghouse
Suite 360, Newhouse II
Syracuse University
Syracuse, NY 13244

RE: ICE 2010FOIA4313

Dear Dr. Long:

This letter is in response to your October 4, 2010 letter to the U.S. Immigration and Customs Enforcement (ICE), Freedom of Information Act (FOIA) Office and supplements our September 22, 2010 fee estimate for your May 17, 2010 FOIA request. You have requested copies of anonymous alien-by-alien data covered by the Enforcement Case Tracking System (ENFORCE) and related modules for individuals and events included in ICE's official arrest, detention and removal statistics, or for whom charging documents were issued.

On September 22, 2010, you were informed by mail that it would take approximately 13 weeks for ICE to compile the statistical information that you have requested, which could potentially encompass millions of rows of data, and therefore you would be billed for the direct costs of producing this data. In that letter, our office estimated your request would yield a processing fee of approximately \$450,000.00. You were informed then that if you did not indicate your commitment to pay the anticipated fees and submit payment of at least \$225,000.00, ICE FOIA would administratively close your FOIA request. Additionally, you were informed that in the alternative you could narrow the scope of your request to reduce the universe of responsive records.

Your October 4, 2010 letter neither confirmed your commitment to pay the anticipated fees nor narrowed the scope of your FOIA request. Rather, your letter raises the following concerns: (1) the determination that the information requested is unavailable; (2) classification of TRAC into the "all other" category; (3) estimated costs; (4) requirement to consult; and (5) notification of the right to appeal the denial of your request for a fee waiver. The purpose of this letter is to address those concerns.

Availability of Certain Categories of Information

Your FOIA request contained an appendix listing 45 categories of information wherein you are seeking to obtain statistical data. This office forwarded your FOIA request and the appendix to ICE Enforcement and Removal Operations (ERO) to review your request. ERO determined that this information would be retrieved from ENFORCE. On July 28, 2010, this office provided you by e-mail a spreadsheet ERO produced that addressed each of the 45 categories in your appendix. The spreadsheet identifies the categories of information that are available and those that are unavailable in ICE databases. Your receipt of this spreadsheet prompted the August 6, 2010 (August 6th call) conference call you referenced in your letter. During the August 6th call, you raised the issue that certain categories of information designated as

unavailable were previously released to you in response to an earlier FOIA request . In responding to this issue, this office informed you of the following:

1. the information previously released to you was pulled from the now obsolete DACS system;
2. the information in DACS was exported to ENFORCE, but it was not a one-to-one transfer of every field;
3. the information that was kept in one field in DACS may have been split into five separate fields in ENFORCE, and some fields were simply eliminated; and
4. that certain information you have requested, does not exist in the ENFORCE database in a manner that would allow it to be tracked, searched, or manipulated.

We have confirmed the facts contained in these statements. ICE has not “labeled” the information as “unavailable” in terms of an unjustified withholding under the FOIA as you claim. As previously stated during the August 6th call and again in the ICE FOIA’s September 22nd letter, ICE is unable to provide certain categories of information as you requested because these categories do not exist within ICE databases in a trackable, searchable, and produceable manner. ICE cannot produce a statistical report composed of statistics for which the agency’s database(s) were not designed to track, search, or produce. Furthermore, ICE is not required under the FOIA or the DHS guidelines to change agency database systems in order to respond to a FOIA request.

TRAC’s Status as an Educational Institution

In our May 17, 2010 acknowledgement letter, ICE informed TRAC that they had been placed in the “all other” category. We reaffirmed this determination in our September 22, 2010 fee estimate letter. After further consideration and consultation with the Department of Justice Office of Information Policy, and based on the facts that TRAC is a research center at Syracuse University and is staffed with professors from the university, we have determined that TRAC does qualify as an educational institution. We have further determined that TRAC does not qualify as a representative of the news media as you have failed to demonstrate how you plan to disseminate this information to the general public beyond posting it to your website.

The Fee Estimate

The \$450,000.00 fee estimate included in our September 22, 2010 letter was based on a spreadsheet provided to our office by ERO. This spreadsheet, which is included for your reference, lists the various tasks required to produce the data you have requested, the staff required to complete those tasks, and the weekly costs of their work. ERO estimated that it would take several data analysts, developers, data architects, testers and system administrators 13 weeks to pull the available data from our systems and compile it into a useable format.

You are being charged for the direct costs of producing this data. The \$450,000.00 fee estimate reflects these direct costs which pursuant to DHS regulations includes the actual expenses incurred by the agency in searching for the records to respond to your FOIA request.¹ Searching for the information you requested includes reasonable efforts to locate and retrieve the information from records maintained in ICE database(s).² However, you are not being charged for the review or duplication costs of the information requested. While, pursuant to DHS regulations, an educational institution cannot be assessed a search fee, ICE believes that this provision is applicable only when reasonable efforts are required to perform the search. In this case, ICE’s search efforts to comply with your FOIA request would require the agency to incur significant costs. This office does not believe that an extraction of data that would

¹ 6 C.F.R. 5.11(b)(2)

² See 6 C.F.R. 5.11(b)(2)(8)

cost the government nearly a half of a million dollars would fall within the scope of a reasonable search, nor did the FOIA or DHS regulations contemplate such a burden on the agency.

Consultation

Your letter also noted that the agency failed in its September 22nd letter to “offer the requestor an opportunity to discuss the matter with Department personnel to see if there is a way to meet the requester’s needs at a lower cost.” (emphasis added). Although the fee estimate letter did not specifically state that ICE is *offering* TRAC the opportunity to discuss the matter, the letter did state “[i]n the alternative [to paying the estimated fees], you may narrow the scope of your request to reduce the universe of responsive records.’ This was the agency’s offer to reduce the costs of this FOIA request by proposing that you narrow the scope of the FOIA request as a means to lower the costs. Pursuant to DHS regulations “[a] notice [of anticipated fees in excess of \$25.00] will offer the requester an opportunity discuss the matter with Department personnel in order to *reformulate the request* to meet the requester’s needs at a lower costs.”³

In Summary

As previously stated in ICE’s September 22nd fee estimate letter to you, your request will not be considered received and further work will not be done on your request until you make a firm commitment to pay the anticipated total fee of **\$450,000.00**, memorialized in writing and received by the ICE FOIA Office within 10 days from the date of this letter. Also, as the fee is estimated above \$250.00, the agency requests that you pay half the cost (**\$225,000.00**) before this office will begin processing the records. You may send your agreement to pay estimated fees, including a payment of at least **\$225,000.00**, made payable to the Treasury of the United States, to this office via mail or facsimile to:

Freedom of Information Act Office
U.S. Immigration and Customs Enforcement
800 North Capitol Street, N.W.
5th Floor, Suite 585
Washington, DC 20536-5009
Fax: (202) 732-0310

Once ICE receives written confirmation of your willingness to pay the total estimated processing fees and half of the estimated payment the agency will immediately begin the search for documents responsive to your request. In its final response to your FOIA request, ICE will adjust the processing fee as necessary to reflect the actual costs, if those fees do not match the estimated fees provided above. In the event that records are processed for which payment is not received, those records may not be released until payment is received.

Furthermore, pursuant to DHS regulations⁴ you still have the option of narrowing the scope of your request to reduce the universe of responsive records. If you wish to narrow the scope, please send an amended request and indicate the processing fee amount you are willing to pay within 10 days from the date of this letter.

If ICE does not receive your proposed alternative methods, or written confirmation of your willingness to pay the total estimated processing fee amount of **\$450,000.00**, or an amended request narrowing the scope

³ (Emphasis added) See 6 C.F.R. 5.11(d).

⁴ *Id.*

of your request, within 10 days from the date of this letter, the agency will consider this request withdrawn, and will administratively close your request.

You have the right to appeal this determination to deny your request for a waiver of fees. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter to: U.S. Immigration Customs Enforcement, Office of Principal Legal Advisor, U.S. Department of Homeland Security, 800 North Capitol Street, N.W., Room 585, Washington, D.C. 20536-5009. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

For your reference, we have included a copy of our May 17, 2010 acknowledgement letter, our September 22, 2010 fee estimate letter, and the fee estimate spreadsheet provided by ERO.

If you have any questions, or would like to discuss this matter, please feel free to contact our office at (202) 732-0300. Please refer to **2010FOIA4313** in all future correspondence.

Sincerely,

A handwritten signature in black ink that reads "Catrina Pavlik-Keenan". The signature is fluid and cursive, with the first name "Catrina" written in a slightly larger, more prominent script than the last name.

Catrina M. Pavlik-Keenan
FOIA Officer

Enclosures: May 17, 2010 acknowledgement letter
 September 22, 2010 fee estimate letter
 Fee estimate spreadsheet

FOIA 10-4313 Time table

Tasks		Resource Required	Labor Category	Week 1
Data Analysis including				
Preliminary requirements gathering		2 Data Analysts	CSA -1 senior and 1 mid level	\$ 10,382.40
Detail data requirements gathering		2 Data Analysts	CSA -1 senior and 1 mid level	
Define data exchange rqmts		1 Data Analyst	CSA Senior	
Data and relationship Analysis		3 Developers/Data Analyst	CSA, 2 senior and one mid level	
Design the table structure to store the data		1 Data Architect	CSA mid	
Build the Scripts		3 Developers/Data Analyst	CSA- 2 senior and 1 mid level	
Test the Scripts		1 Developer/1 tester	CSA senior and Test Eng	
Resulted Data Analysis		3 Developers /Data Analyst	CSA- 2 senior and 1 mid level	
Define data exchange method		2 Admins	SA and DBA	
Deliver the result set		Sys Admin	SA	
Systems Architect		1 Systems Architect	Systems Architect half time thru out	\$ 3,540.80
Weekly Totals				\$ 13,923.20
Total LOE				
Comment : Availability of Requested information				
Data found in IIDS	50%			
Data found in EID	15%			
Data not available	15%			
Not sure	20%			
	100%			

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